

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ERNEST LEE BRAZZEL,

Petitioner,

v.

ALICE PAYNE,

Respondent.

Case No. C04-5892 RBL

ORDER

THIS MATTER comes on before the above-entitled Court upon Petitioner's filing of a Notice of Appeal.

Having considered the entirety of the records and file herein, the Court rules as follows:

In order for the Court of Appeals to proceed on petitioner's Notice of Appeal, this Court must issue a Certificate of Appealability. 28 U.S.C. § 2253(c)(1). For the reasons stated in the Magistrate Judge's Report and Recommendation [Dkt. #23], this Court declines to issue a Certificate of Appealability because the petitioner has not made "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Furthermore, petitioner's Motion to Proceed *In Forma Pauperis* on Appeal [Dkt. #28] and Motion for Appointment of Counsel [Dkt #29] are **DENIED**.

Dated this 2nd day of December, 2005.


RONALD B. LEIGHTON
UNITED STATES DISTRICT JUDGE